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more than two weeks of instructional time longer than any other term in that program.

(6) A program is “offered in modules” if the program uses a standard term or nonstandard-term academic calendar, is not a subscription-based program, and a course or courses in the program do not span the entire length of the payment period or period of enrollment.

(7)(i) “Academic attendance” and “attendance at an academically-related activity” must include academic engagement as defined under 34 CFR 600.2.

(ii) A determination of “academic attendance” or “attendance at an academically-related activity” must be made by the institution; a student’s certification of attendance that is not supported by institutional documentation is not acceptable.

(8) A program is a nonstandard-term program if the program is a term-based program that does not qualify under 34 CFR 690.63(a)(1) or (a)(2) to calculate Federal Pell Grant payments under 34 CFR 690.63(b) or (c).

(9) A student in a program offered in modules is scheduled to complete the days in a module if the student’s coursework in that module was used to determine the amount of the student’s eligibility for title IV, HEA funds for the payment period or period of enrollment.

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§ 668.23 Compliance audits and audited financial statements.

(a) *General*—(1) *Independent auditor*. For purposes of this section, the term “independent auditor” refers to an independent certified public accountant or a government auditor. To conduct an audit under this section, a government auditor must meet the Government Auditing Standards qualification and independence standards, including standards related to organizational independence.

(2) *Institutions*. An institution that participates in any title IV, HEA program must at least annually have an independent auditor conduct a compliance audit of its administration of that program and an audit of the institution’s general purpose financial statements.

(3) *Third-party servicers*. Except as provided under this part or 34 CFR part 682, with regard to complying with the provisions under this section a third-party servicer must follow the procedures contained in the audit guides developed by and available from the Department of Education’s Office of Inspector General. A third-party servicer is defined under § 668.2 and 34 CFR 682.200.

(4) *Submission deadline*. Except as provided by the Single Audit Act, Chapter 75 of title 31, United States Code, an institution must submit annually to the Secretary its compliance audit and its audited financial statements no later than six months after the last day of the institution’s fiscal year.

(5) *Audit submission requirements*. In general, the Secretary considers the compliance audit and audited financial statement submission requirements of this section to be satisfied by an audit conducted in accordance with the Office of Management and Budget Circular A–133, Audits of States, Local Governments, and Non-Profit Organizations, or the audit guides developed by and available from the Department of Education’s Inspector General, whichever is applicable to the entity, and provided that the Federal student aid functions performed by that entity are covered in the submission. (Both OMB circulars are available by calling OMB’s Publication Office at (202) 395–7332, or they can be obtained in electronic form on the OMB Home Page (<http://www.whitehouse.gov>).

(b) *Compliance audits for institutions*. (1) An institution’s compliance audit must cover, on a fiscal year basis, all title IV, HEA program transactions, and must cover all of those transactions that have occurred since the period covered by the institution’s last compliance audit.

(2) The compliance audit required under this section must be conducted in accordance with—

(i) The general standards and the standards for compliance audits contained in the U.S. General Accounting Office's (GAO's) Government Auditing Standards. (This publication is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402); and

(ii) Procedures for audits contained in audit guides developed by, and available from, the Department of Education's Office of Inspector General.

(3) The Secretary may require an institution to provide a copy of its compliance audit report to guaranty agencies or eligible lenders under the FFEL programs, State agencies, the Secretary of Veterans Affairs, or nationally recognized accrediting agencies.

(c) *Compliance audits for third-party servicers.* (1) A third-party servicer that administers title IV, HEA programs for institutions does not have to have a compliance audit performed if—

(i) The servicer contracts with only one institution; and

(ii) The audit of that institution's administration of the title IV, HEA programs involves every aspect of the servicer's administration of that program for that institution.

(2) A third-party servicer that contracts with more than one participating institution may submit a compliance audit report that covers the servicer's administration of the title IV, HEA programs for all institutions with which the servicer contracts.

(3) A third-party servicer must submit annually to the Secretary its compliance audit no later than six months after the last day of the servicer's fiscal year.

(4) The Secretary may require a third-party servicer to provide a copy of its compliance audit report to guaranty agencies or eligible lenders under the FFEL programs, State agencies, the Secretary of Veterans Affairs, or nationally recognized accrediting agencies.

(d) *Audited financial statements*—(1) *General.* To enable the Secretary to make a determination of financial responsibility, an institution must, to the extent requested by the Secretary, submit to the Secretary a set of financial statements for its latest complete fiscal year, as well as any other docu-

mentation the Secretary deems necessary to make that determination. Financial statements submitted to the Secretary must be prepared on an accrual basis in accordance with generally accepted accounting principles, and audited by an independent auditor in accordance with generally accepted government auditing standards, issued by the Comptroller General of the United States and other guidance contained in the Office of Management and Budget Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations; or in audit guides developed by, and available from, the Department of Education's Office of Inspector General, whichever is applicable. As part of these financial statements, the institution must include a detailed description of related entities based on the definition of a related entity as set forth in the Statement of Financial Accounting Standards (SFAS) 57. The disclosure requirements under this provision extend beyond those of SFAS 57 to include all related parties and a level of detail that would enable to Secretary to readily identify the related party. Such information may include, but is not limited to, the name, location and a description of the related entity including the nature and amount of any transactions between the related party and the institution, financial or otherwise, regardless of when they occurred.

(2) *Submission of additional financial statements.* To the extent requested by the Secretary in determining whether an institution is financially responsible, the Secretary may also require the submission of audited consolidated financial statements, audited full consolidating financial statements, audited combined financial statements or the audited financial statements of one or more related parties that have the ability, either individually or collectively, to significantly influence or control the institution, as determined by the Secretary.

(3) *Disclosure of Title IV, HEA program revenue.* A proprietary institution must disclose in a footnote to its financial statement audit the percentage of its revenues derived from the Title IV, HEA program funds that the institution received during the fiscal year

covered by that audit. The revenue percentage must be calculated in accordance with § 668.28. The institution must also report in the footnote the dollar amount of the numerator and denominator of its 90/10 ratio as well as the individual revenue amounts identified in section 2 of appendix C to subpart B of part 668.

(4) *Audited financial statements for third-party servicers.* A third-party servicer that enters into a contract with a lender or guaranty agency to administer any aspect of the lender's or guaranty agency's programs, as provided under 34 CFR part 682, must submit annually an audited financial statement. This financial statement must be prepared on an accrual basis in accordance with generally accepted accounting principles, and audited by an independent auditor in accordance with generally accepted government auditing standards and other guidance contained in audit guides issued by the Department of Education's Office of Inspector General.

(e) *Access to records.* (1) An institution or a third-party servicer that has a compliance or financial statement audit conducted under this section must—

(i) Give the Secretary and the Inspector General access to records or other documents necessary to review that audit, including the right to obtain copies of those records or documents; and

(ii) Require an individual or firm conducting the audit to give the Secretary and the Inspector General access to records, audit work papers, or other documents necessary to review that audit, including the right to obtain copies of those records, work papers, or documents.

(2) An institution must give the Secretary and the Inspector General access to records or other documents necessary to review a third-party servicer's compliance or financial statement audit, including the right to obtain copies of those records or documents.

(f) *Determination of liabilities.* (1) Based on the audit finding and the institution's or third-party servicer's response, the Secretary determines the amount of liability, if any, owed by the

institution or servicer and instructs the institution or servicer as to the manner of repayment.

(2) If the Secretary determines that a third-party servicer owes a liability for its administration of an institution's title IV, HEA programs, the servicer must notify each institution under whose contract the servicer owes a liability of that determination. The servicer must also notify every institution that contracts with the servicer for the same service that the Secretary determined that a liability was owed.

(g) *Repayments.* (1) An institution or third-party servicer that must repay funds under the procedures in this section shall repay those funds at the direction of the Secretary within 45 days of the date of the Secretary's notification, unless—

(i) The institution or servicer files an appeal under the procedures established in subpart H of this part; or

(ii) The Secretary permits a longer repayment period.

(2) Notwithstanding paragraphs (f) and (g)(1) of this section—

(i) If an institution or third-party servicer has posted surety or has provided a third-party guarantee and the Secretary questions expenditures or compliance with applicable requirements and identifies liabilities, then the Secretary may determine that deferring recourse to the surety or guarantee is not appropriate because—

(A) The need to provide relief to students or borrowers affected by the act or omission giving rise to the liability outweighs the importance of deferring collection action until completion of available appeal proceedings; or

(B) The terms of the surety or guarantee do not provide complete assurance that recourse to that protection will be fully available through the completion of available appeal proceedings; or

(ii) The Secretary may use administrative offset pursuant to 34 CFR part 30 to collect the funds owed under the procedures of this section.

(3) If, under the proceedings in subpart H, liabilities asserted in the Secretary's notification, under paragraph (e)(1) of this section, to the institution or third-party servicer are upheld, the institution or third-party servicer

must repay those funds at the direction of the Secretary within 30 days of the final decision under subpart H of this part unless—

(i) The Secretary permits a longer repayment period; or

(ii) The Secretary determines that earlier collection action is appropriate pursuant to paragraph (g)(2) of this section.

(4) An institution is held responsible for any liability owed by the institution's third-party servicer for a violation incurred in servicing any aspect of that institution's participation in the title IV, HEA programs and remains responsible for that amount until that amount is repaid in full.

(h) *Audit submission requirements for foreign institutions.* (1) *Audited financial statements.* (i) The Secretary waives for that fiscal year the submission of audited financial statements if the institution is a foreign public or nonprofit institution that received less than \$500,000 in U.S. title IV program funds during its most recently completed fiscal year, unless that foreign public or nonprofit institution is in its initial provisional period of participation, and received title IV program funds during that fiscal year, in which case the institution must submit, in English, audited financial statements prepared in accordance with generally accepted accounting principles of the institution's home country.

(ii) Except as provided in paragraph (h)(1)(iii) of this section, a foreign institution that received \$500,000 or more in U.S. title IV program funds during its most recently completed fiscal year must submit, in English, for each most recently completed fiscal year in which it received title IV program funds, audited financial statements prepared in accordance with generally accepted accounting principles of the institution's home country along with corresponding audited financial statements that meet the requirements of paragraph (d) of this section.

(iii) In lieu of making the submission required by paragraph (h)(1)(ii) of this section, a public or private nonprofit institution that received—

(A) \$500,000 or more in U.S. title IV program funds, but less than \$3,000,000 in U.S. title IV program funds during

its most recently completed fiscal year, may submit for that year, in English, audited financial statements prepared in accordance with the generally accepted accounting principles of the institution's home country, and is not required to submit the corresponding audited financial statements that meet the requirements of paragraph (d) of this section;

(B) At least \$3,000,000, but less than \$10,000,000 in U.S. title IV, program funds during its most recently completed fiscal year, must submit in English, for each most recently completed fiscal year, audited financial statements prepared in accordance with the generally accepted accounting principles of the institution's home country along with corresponding audited financial statements that meet the requirements of paragraph (d) of this section, except that an institution that continues to receive at least \$3,000,000 but less than \$10,000,000, in U.S. title IV funds during its most recently completed fiscal year may omit the audited financial statements that meet the requirements of paragraph (d) of this section for up to two consecutive years following the submission of audited financial statements that meet the requirements of paragraph (d) of this section.

(2) *Compliance audits.* A foreign institution's compliance audit must cover, on a fiscal year basis, all title IV, HEA program transactions, and must cover all of those transactions that have occurred since the period covered by the institution's last compliance audit. A compliance audit that is due under this paragraph must be submitted no later than six months after the last day of the institution's fiscal year, and must meet the following requirements:

(i) If the foreign institution received \$500,000 or more in U.S. dollars in title IV, HEA program funds during its most recently completed fiscal year, it must submit a standard compliance audit for that prior fiscal year that is performed in accordance with audit guides developed by, and available from, the Department of Education's Office of Inspector General, together with an alternative compliance audit or audits prepared in accordance with paragraph

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(h)(2)(ii) of this section for any preceding fiscal year or years in which the foreign institution received less than \$500,000 in U.S. dollars in title IV, HEA program funds and for which a compliance audit has not already been submitted;

(ii) If the foreign institution received less than \$500,000 U.S. in title IV, HEA program funds for its most recently completed fiscal year, it must submit an alternative compliance audit for that prior fiscal year that is performed in accordance with audit guides developed by, and available from, the Department of Education's Office of Inspector General, except as noted in paragraph (h)(2)(iii) of this section.

(iii) If so notified by the Secretary, a foreign institution may submit an alternative compliance audit performed in accordance with audit guides developed by, and available from, the Department of Education's Office of Inspector General, that covers a period not to exceed three of the institution's consecutive fiscal years if such audit is submitted either no later than six months after the last day of the most recent fiscal year, or contemporaneously with a standard compliance audit timely submitted under paragraph (h)(2)(i) or (h)(3)(ii) of this section for the most recently completed fiscal year, and if the following conditions are met:

(A) The institution received less than \$500,000 in title IV, HEA program funds for its most recently completed fiscal year.

(B) The institution has timely submitted acceptable compliance audits for two consecutive fiscal years, and following such submission, has no history of late submission since then.

(C) The institution is fully certified.

(3)(i) *Exceptions.* Notwithstanding the provisions of paragraphs (h)(1)(i) and (h)(1)(iii) of this section, the Secretary may issue a letter to a foreign institution that identifies problems with its financial condition or financial reporting and requires the submission of audited financial statements in the manner specified by the Secretary.

(ii) Notwithstanding the provisions of paragraphs (h)(2)(ii) and (h)(2)(iii) of this section, the Secretary may issue to a foreign institution a letter that

identifies problems with its administrative capability or compliance reporting that may require the compliance audit to be performed at a higher level of engagement, and may require the compliance audit to be submitted annually.

(Approved by the Office of Management and Budget under control number 1840–0697)

(Authority: 20 U.S.C. 1088, 1094, 1099c, 1141, and section 4 of Pub. L. 95–452, 92 Stat. 1101–1109)

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§ 668.24 Record retention and examinations.

(a) *Program records.* An institution shall establish and maintain, on a current basis, any application for title IV, HEA program funds and program records that document—

(1) Its eligibility to participate in the title IV, HEA programs;

(2) The eligibility of its educational programs for title IV, HEA program funds;

(3) Its administration of the title IV, HEA programs in accordance with all applicable requirements;

(4) Its financial responsibility, as specified in this part;

(5) Information included in any application for title IV, HEA program funds; and

(6) Its disbursement and delivery of title IV, HEA program funds.

(b) *Fiscal records.* (1) An institution shall account for the receipt and expenditure of title IV, HEA program funds in accordance with generally accepted accounting principles.

(2) An institution shall establish and maintain on a current basis—

(i) Financial records that reflect each HEA, title IV program transaction; and

(ii) General ledger control accounts and related subsidiary accounts that identify each title IV, HEA program transaction and separate those transactions from all other institutional financial activity.

(c) *Required records.* (1) The records that an institution must maintain in order to comply with the provisions of this section include but are not limited to—